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PONNALA LAKSHMAIAH

v.

KOMMURI PRATAP REDDY & ORS

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SUPREME COURT, INDIA
(2012) 7 SUPREME COURT CASES 788
TS THAKUR J
GYAN SUDHA MISRA J
[CIVIL APPEAL NO: 4993 OF 2012]*
C 6 JULY 2012

ELECTION: *Election Petition/Trial - Maintainability/Preliminary objections - Purity of election process - Consideration of - Practice by returned candidates of seeking dismissal of election petitions in limine on*
D *technical grounds or prolonging of proceedings - Need for courts to avoid hypertechnical approach - Held, courts have to guard against such attempts - Courts are, therefore, duty-bound to examine allegations of irregularities or illegalities in election process or corrupt practice(s) whenever the same are raised in an election petition within framework of*
E *RP Act, 1951 without being unduly hypertechnical in their approach and without being oblivious of ground realities - Representation of the People Act, 1951 - Sections 100, 123, 81, 82 and 117 - Conduct of Elections Rules, 1961, r. 94-A (paras 16 to 31)*

F ***ELECTION:*** *Election Petition/Trial - Maintainability/Preliminary objections - Non-filing of affidavit in prescribed form - Whether fatal - Averments supported by affidavit under other provisions of law than those prescribed - Substantial compliance - Reiterated, non-compliance with s. 83, RP Act, 1951 does not attract dismissal of election petition in terms*
G *of s. 86 thereof - Defect if any in verification of affidavit filed in support of petition is not fatal, despite fact that s. 83(1) proviso RP Act is couched in a mandatory form - Rather, it is curable - Representation of the People Act, 1951 - Sections 83(1) and 86 - Conduct of Elections Rules, 1961, R. 94-A (paras 9 and 22 to 31)*

H ***ELECTION:*** *Election Petition/Trial - Maintainability/Preliminary objections - Cause of action - If present - Material facts and particulars - Distinction, reiterated - Election petition raising triable issues but*

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* Arising out of SLP (C) No. 20013 of 2010. From the Judgment and Order dated 22-4-2010 of the High Court of Andhra Pradesh at Hyderabad in EA No. 873 of 2009 in EP No. 13 of 2009

supported with improper affidavit - Whether can be dismissed on technical grounds - Curability of technical defects - Improper counting of votes - Allegation of irregularity and illegality in counting votes supported with ample evidence - High Court held that prima facie case was made out for re-counting and question of rejection of election petition at threshold did not arise and permitting election petitioner to cure technical defects in petition - Sustainability of - Reiterated, full and comprehensive view of pleadings is to be taken for determination as to existence of cause of action - Averments in petition cannot be read out of context or in isolation - A defect in verification of election petition or affidavit accompanying election petition is curable, hence, the same is not sufficient to justify dismissal of election petition at threshold, if otherwise cause of action is disclosed in petition - Material facts and not particulars are required to be incorporated in pleadings - Held, in present case as material facts have already been enumerated in election petition, statutory requirement is therefore satisfied - Thus, High Court was right in refusing to dismiss petition in limine on ground that it disclosed no cause of action - Representation of the People Act, 1951 - Sections 83, 86, 123 and 100 - Civil Procedure Code, 1908 - O. 7 r. 11 - Conduct of Elections Rules, 1961, r. 94-A (paras 2, 3, 5, 9, 10 and 15 to 31)

ELECTION: *Election Petition/Trial - Burden of proof - Reiterated, is on election petitioner (para 16)*

Dismissing the appeal with costs, the Supreme Court

Held:

On a somewhat erroneous understanding of the law settled by the Supreme Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a twofold objective. First, they take a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 and 117 of the RP Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself subserves the interests of the successful candidate. Dilatory tactics including long-drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time-frame. (para 16)

A While a successful candidate is entitled to defend his election and seek dismissal of the petition on grounds legally available to him, the prolongation of proceedings by prevarication is not conducive to the ends of justice, that can be served only by an early and speedy disposal of the proceedings. The courts have therefore to B guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The courts need to be cautious in dealing with requests for dismissal of election petitions at the threshold and exercise their powers of dismissal only in cases where even on a C plain reading of the petition no cause of action is disclosed. The courts generally lean in favour of returned candidates and place the onus of proof on the person challenging the end result of an electoral contest. That approach is more in the nature of a rule of practice than a rule of law and should not be unduly stretched D beyond a limit. While it is important to respect the popular verdict and the courts ought to be slow in upsetting the same, it is equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of E the RP Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The courts are, therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hypertechnical in their approach and without being F oblivious of the ground realities. (paras 17 and 29)

Experience has shown that the electoral process is, despite several safeguards taken by the statutory authorities concerned, often vitiated by use of means, factors and considerations that are G specifically forbidden by the statute. The electoral process is vulnerable to misuse in several ways, in the process distorting the picture in which the obvious may be completely different from the real. Electoral reforms are, therefore, a crying need of our times but have remained a far cry. If the courts also adopt a technical H approach towards the resolution of electoral disputes, the confidence of the people not only in the democratic process but in the efficacy of the judicial determination of electoral disputes will be seriously undermined. (para 30)

I *T.A. Ahammed Kabeer v. A.A. Azeez, (2003) 5 SCC 650; P. Malaichami v. M. Andi Ambalam, (1973) 2 SCC 170, relied on*

The format of the affidavit is not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Conduct of Elections Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Conduct of Elections Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so. (para 28)

In the absence of any provision making breach of the proviso to Section 83(1) of the RP Act a valid ground of dismissal of an election petition at the threshold, there is no reason why the requirement of filing an affidavit in a given format should be exalted by a judicial interpretation to the status of a statutory mandate. A petition that raises triable issues need not, therefore, be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit. (para 31)

Sardar Harcharan Singh Brar v. Sukh Darshan Singh, (2004) 11 SCC 196
H.D. Revanna v. G. Puttaswamy Gowda, (1999) 2 SCC 217
G. Mallikarjunappa v. Shamanur Shivashankarappa, (2001) 4 SCC 428
Vijay Laxmi Sadho v. Jagdish, (2001) 2 SCC 247
F.A. Sapa v. Singora, (1991) 3 SCC 375
Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore, AIR 1964 SC 1545
T. Phungzathang v. Hangkhanlian, (2001) 8 SCC 358
Manohar Joshi v. Nitin Bhaurao Patil, (1996) 1 SCC 169
Kamal Narain Sarma v. Dwarka Prasad Mishra, AIR 1966 SC 436, applied
Om Prakash Srivastava v. Union of India, (2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24
Udhav Singh v. Madhav Rao Scindia, (1977) 1 SCC 511
Church of North India v. Lavajibhai Ratanjibhai, (2005) 10 SCC 760
Liverpool & London S.P. and I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512
Raj Narain v. Indira Nehru Gandhi, (1972) 3 SCC 850
V.S. Achuthanandan v. P.J. Francis, (1999) 3 SCC 737
Mahendra Pal v. Ram Dass Malanger, (2001) 1 SCC 261
Harkirat Singh v. Amrinder Singh, (2005) 13 SCC 511
Umesh Challiyill v. K.P. Rajendran, (2008) 11 SCC 740
Virender Nath Gautam v. Satpal Singh, (2007) 3 SCC 617, relied on

M. Kamalam v. V.A. Syed Mohammed, (1978) 2 SCC 659
R.P. Moidutty v. P.T. Kunju Mohammad, (2000) 1 SCC 481
V. Narayanaswamy v. C.P. Thirunavukkarasu, (2000) 2 SCC 294
Kamalnath v. Sudesh Verma, (2002) 2 SCC 410
Mithilesh Kumar Pandey v. Baidyanath Yadav, (1984) 2 SCC 1
Ravinder Singh v. Janmeja Singh, (2000) 8 SCC 191
Ram Sukh v. Dinesh Aggarwal, (2009) 10 SCC 541, distinguished
Kommuri Pratap Reddy v. Ponnala Lakshmaiah, EP No. 13 of 2009, order dated 22-4-2010 (AP), affirmed

ELECTION: *Election Petition/Trial - Maintainability/Preliminary objections - Defect in verification/affidavit - Need to raise at earliest stage - Conduct of Elections Rules, 1961 - R. 94-A - Representation of the People Act, 1951, s. 83(1) (paras 20 and 21)*

Balwan Singh v. Prakash Chand, (1976) 2 SCC 440, impliedly followed

PK-D/50126/C

Advocates who appeared in this case:

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For the respondents - Ranjit Kumar and Jaideep Gupta, Senior Advocates (A.D.N. Rao, Annam Venkatesh, Keerthi Kiran Kota, Ms Neelam Jain, D. Mahesh Babu, Amit K. Nain, Ms Anu Gupta, Chandra Mohan Anisetty, Ms T. Anamika and G.N. Reddy, Advocates)

Chronological list of cases cited:

Kommuri Pratap Reddy v. Ponnala Lakshmaiah EP No. 13 of 2009, order dated 22-4-2010 (AP),
Ram Sukh v. Dinesh Aggarwal (2009) 10 SCC 541
Umesh Challiyill v. K.P. Rajendran (2008) 11 SCC 740
Virender Nath Gautam v. Satpal Singh (2007) 3 SCC 617
Om Prakash Srivastava v. Union of India (2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24
Harkirat Singh v. Amrinder Singh (2005) 13 SCC 511
Church of North India v. Lavajibhai Ratanjibhai (2005) 10 SCC 760
Sardar Harcharan Singh Brar v. Sukh Darshan Singh (2004) 11 SCC 196
Liverpool & London S.P. and I Assn. Ltd. v. M.V. Sea Success I (2004) 9 SCC 512
T.A. Ahammed Kabeer v. A.A. Azeez (2003) 5 SCC 650
Kamalnath v. Sudesh Verma (2002) 2 SCC 410
T. Phungzathang v. Hangkhanlian (2001) 8 SCC 358
G. Mallikarjunappa v. Shamanur Shivashankarappa (2001) 4 SCC 428
Vijay Laxmi Sadho v. Jagdish (2001) 2 SCC 247
Mahendra Pal v. Ram Dass Malanger (2000) 1 SCC 261
Ravinder Singh v. Janmeja Singh (2000) 8 SCC 191
V. Narayanaswamy v. C.P. Thirunavukkarasu (2000) 2 SCC 294

R.P. Moidutty v. P.T. Kunju Mohammad (2000) 1 SCC 481 A
V.S. Achuthanandan v. P.J. Francis (1999) 3 SCC 737
H.D. Revanna v. G. Puttaswamy Gowda (1999) 2 SCC 217
Manohar Joshi v. Nitin Bhaurao Patil (1996) 1 SCC 169
F.A. Sapa v. Singora (1991) 3 SCC 375
Mithilesh Kumar Pandey v. Baidyanath Yadav (1984) 2 SCC 1 B
M. Kamalam v. V.A. Syed Mohammed (1978) 2 SCC 659
Udhav Singh v. Madhav Rao Scindia (1977) 1 SCC 511
Balwan Singh v. Prakash Chand (1976) 2 SCC 440
P. Malaichami v. M. Andi Ambalam (1973) 2 SCC 170
Raj Narain v. Indira Nehru Gandhi (1972) 3 SCC 850
Kamal Narain Sarma v. Dwarka Prasad Mishra AIR 1966 SC 436 C
Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore AIR 1964 SC 1545

JUDGMENT D

Thakur J:

[1] Leave granted. The short question that falls for determination in this appeal by special leave is whether the High Court of Andhra Pradesh was right in holding[1] that the election petition filed by Respondent 1 against the appellant who happens to be the successful candidate in the election to 98, Jangaon Assembly Constituency in the State of Andhra Pradesh, disclosed a cause of action and could not therefore be dismissed at the threshold. E F

[2] The factual matrix in which the election petition came to be filed by the respondent has been set out at length by the High Court, hence need not be recounted except to the extent the same is essential for the disposal of the appeal. The High Court has, while holding that the averments made in the election petition raised triable issues and disclosed a cause of action, observed: G

> 23. As seen from the statement showing voter turnout report in connection with General Elections, 2009 to 98, Jangaon Legislative Assembly Constituency on 16-4-2009, the total votes polled, as reported by the Returning Officer, is shown as 1,50,678 from 251 polling stations. Whereas in the final result sheet in Form 20, total valid votes is shown as 1,51,411. So, from this document, it is clear that *prima facie* a proper counting had not taken place. H I

1. *Kommuri Pratap Reddy v. Ponnala Lakshmaiah*, EP No. 13 of 2009, order dated 22 4 2010 (AP)

A Therefore, *prima facie* it can be said to be an irregularity on the part of the Returning Officer involved in dereliction of the duty. Similarly, there is a specific allegation that out of 653 postal ballots, the election petitioner would have secured more than 300 votes, if properly counted, and out of the said votes, 142 votes which were validly polled in favour of the election petitioner, were B illegally declared as invalid and another 52 votes polled in favour of the election petitioner were counted in favour of the first respondent, and 45 invalid votes were illegally counted in favour of the first respondent. Since the margin between the elected candidate and the nearest rival is only 236 votes, had postal C ballots been counted properly, then there would have been a possibility of materially affecting the result of the election insofar as the returned candidate. So, under no stretch of imagination, can it be said that the allegations in the election petition are vague.

D 24. No doubt, it is true that in view of the decision of the Apex Court, re-counting of the votes cannot be resorted to as a matter of course and every endeavour should be made to protect the secrecy of the ballots. But, at the same time, there is suspicion of the correctness of the figures mentioned in the crucial documents of the statement showing voters' turnout report and E Form 20 final result sheet, where there is a variance between total number of votes polled and votes counted. The two basic requirements laid down by the Apex Court, to order re-counting, are: (a) the election petition seeking re-count of the ballot papers must contain an adequate statement of the material facts on which the allegations of irregularity or illegality in counting are founded; F and (b) on the basis of evidence adduced in support of the allegations, the Tribunal must be *prima facie* satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary.

G Therefore, the questions whether counting of votes by the officials is in accordance with the rules and regulations and also whether the votes polled in favour of the election petitioner were rejected as invalid or there was improper counting of votes polled in favour of the returned candidate, are required to be decided after H adducing evidence only. The allegation that because of the improper counting of postal ballots polled in favour of the election petitioner, the election petitioner could not secure 300 votes, if accepted as true at this stage, it would materially affect the election result because the margin of votes polled between the returned candidate and his nearest rival is very narrow. In the I election petition, the allegation with regard to irregularity or illegality in counting of votes, which affects the election of the returned candidate materially, has been clearly stated in the election petition. It is not a vague or general allegation that some

> irregularities or illegalities have been committed in counting. Similarly, there is allegation that in the first instance, after totalling of all votes, the election petitioner secured a majority of 44 votes and the same was informed to the electronic media, and some TV channels telecasted the same immediately. A compact disc (CD) is also filed along with the election petition, in support of the said allegation. It is also alleged that none of the contested candidates filed any petition for re-counting of votes within maximum period of five minutes after the election petitioner was declared to have secured a majority of 44 votes. Therefore, there is *prima facie* material to show that there was irregularity or illegality in counting of votes which resulted in affecting materially the election of the returned candidate, so as to proceed further with the election petition. As, at this stage, *prima facie* case for re-counting, as seen from the allegations in the election petition, is made out, the pleadings cannot be struck off as unnecessary. Therefore, the question of rejecting the election petition at this stage does not arise.

[3] Having carefully gone through the averments made in the election petition, we are of the opinion that the election petition sets out the requisite material facts that disclose a cause of action and gives rise to triable issues, which cannot be given a short shrift by taking an unduly technical view as to the nature of the pleadings. There is no denying the fact that the courts are competent to dismiss petitions not only on the ground that the same do not comply with the provisions of Sections 81, 82 and 117 of the Representation of the People Act, 1951 but also on the ground that the same do not disclose any cause of action. The expression "cause of action" has not been defined either in the Civil Procedure Code or elsewhere and is more easily understood than precisely defined.

[4] This Court has in *Om Prakash Srivastava v. Union of India*[2] attempted an explanation of the expression in the following words: (SCC p. 211, para 12)

> 12. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense 'cause of action' means the circumstances forming the infraction of the right or the immediate occasion for the reaction. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but also the infraction coupled

2. (2006) 6 SCC 207 : (2006) 3 SCC (Cri) 24

A with the right itself. Compendiously, as noted above, the expression means every fact, which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary, to prove each fact, comprises in 'cause of action'.

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[5] It is equally well-settled that while examining whether a plaint or an election petition discloses a cause of action, the court has a full and comprehensive view of the pleading. The averments made in the plaint or petition cannot be read out of context or in C isolation. They must be taken in totality for a true and proper understanding of the case set up by the plaintiff.

[6] This Court has in *Udhav Singh v. Madhav Rao Scindia*[3] given a timely reminder of the principle in the following words: (SCC D pp. 520-21, para 33)

> 33. We are afraid, this ingenious method of construction after compartmentalisation, dissection, segregation and inversion of the language of the paragraph, suggested by the counsel, runs counter to the cardinal canon of interpretation, according to which, a E pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context, in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of F words, or change of its apparent grammatical sense. The intention of the party concerned is to be gathered, primarily, from the tenor and terms of his pleading taken as a whole.

[7] Reference may also be made to the decision of this Court in *Church of North India v. Lavajibhai Ratanjibhai*[4] wherein this Court G reiterated that for purposes of determining whether the plaint discloses a cause of action, the court must take into consideration the plaint as a whole. It is only if even after the plaint is read as a whole, that no cause of action is found discernible that the court can exercise its power under Order 7 Rule 11 CPC.

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[8] To the same effect is the decision of this Court in *Liverpool & London S.P. and I Assn. Ltd. v. M.V. Sea Success I*[5] where this Court held that the disclosure of a cause of action in the plaint is

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3. (1977) 1 SCC 511
4. (2005) 10 SCC 760
5. (2004) 9 SCC 512

a question of fact and the answer to that question must be found only from the reading of the plaint itself. The court trying a suit or an election petition, as the position is in the present case, shall while examining whether the plaint or the petition discloses a cause of action, to assume that the averments made in the plaint or the petition are factually correct. It is only if despite the averments being taken as factually correct, the court finds no cause of action emerging from the averments that it may be justified in rejecting the plaint. The following paragraph from the decision is apposite in this regard: (SCC p. 562, para 139)

> 139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed.

[9] We may also gainfully refer to the decision of this Court in *H.D. Revanna v. G. Puttaswamy Gowda*[6] where this Court held that an election petition can be dismissed for non-compliance with Sections 81, 82 and 117 of the Representation of the People Act, 1951 but it may also be dismissed if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. A defect in the verification of the election petition or the affidavit accompanying the election petition was held to be curable, hence, not sufficient to justify dismissal of the election petition under Order 7 Rule 11 or Order 6 Rule 16 of the CPC. The following passage in this regard is instructive: (SCC p. 223, para 14)

> 14. … the relevant provisions in the Act are very specific. Section 86 provides for dismissal of an election petition in limine for non compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with … Sections 82 and 117 are not relevant in this case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC.

6. (1999) 2 SCC 217

A Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.

[10] Applying the above principles to the case at hand, we do not see any error in the order[1] passed by the High Court refusing B to dismiss the petition in limine on the ground that the same discloses no cause of action. The averments made in the election petition if taken to be factually correct, as they ought to for purposes of determining whether a case for exercise of powers under Order 7 Rule 11 has been made out, do in our opinion, C disclose a cause of action. The High Court did not, therefore, commit any error much less an error resulting in miscarriage of justice, to warrant interference by this Court in exercise of its extraordinary powers under Article 136 of the Constitution.

D **[11]** There was some debate at the Bar as to whether the petition discloses material facts and particulars and if it does not, whether it could be dismissed on the ground of the petition being deficient, hence it is no petition in the eye of the law. That argument need not detain us for long, as the legal position on the E subject is well-settled by a long line of decisions rendered by this Court.

[12] In *Raj Narain v. Indira Nehru Gandhi*[7] this Court held that if allegations regarding a corrupt practice do not disclose the F constituent parts of the corrupt practice alleged, the same will not be allowed to be proved and those allegations cannot be amended after the period of limitation for filing an election petition but the court may allow particulars of any corrupt practice alleged in the petition to be amended or amplified. Dealing with the rules of G pleadings, this Court observed: (SCC pp. 858, para 19)

> 19. Rules of pleadings are intended as aids for a fair trial and for reaching a just decision. An action at law should not be equated to a game of chess. Provisions of law are not mere formulae to be observed as rituals. Beneath the words of a provision of law, H generally speaking, there lies a juristic principle. It is the duty of the court to ascertain that principle and implement it.

[13] The Court in *Raj Narain* case[7] further held that just because a corrupt practice has to be strictly proved does not mean that a I pleading in an election petition must be strictly construed. Even in

1. *Kommuri Pratap Reddy v. Ponnala Lakshmaiah*, EP No. 13 of 2009, order dated 22-4-2010 (AP)
7. (1972) 3 SCC 850

a criminal trial, a defective charge did not necessarily result in the acquittal of the accused unless it was shown that any such defect had prejudiced him. The Court held that it cannot refuse to enquire into allegations made by the election petitioner merely because the election petitioner or someone who prepared his brief did not know the language of the law. The principle was reiterated by this Court in *H.D. Revanna v. G. Puttaswamy Gowda*[6], *V.S. Achuthanandan v. P.J. Francis*[8], *Mahendra Pal v. Ram Dass Malanger*[9] and *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*[10].

[14] In *Harkirat Singh v. Amrinder Singh*[11] this Court once again stated the distinction between material facts and particulars and declared that material facts are primary and basic facts which must be pleaded by the plaintiff while particulars are details in support of those facts meant to amplify, refine and embellish the material facts by giving distinct touch to the basic contours of a picture already drawn so as to make it more clear and informative. To the same effect are the decisions of this Court in *Umesh Challiyill v. K.P. Rajendran*[12] and *Virender Nath Gautam v. Satpal Singh*[13].

[15] The High Court has, in the present case, held that the material facts constituting the foundation of the case set up by the election petitioner have been stated in the election petition. That being so, the requirement of Section 83 of the Act *viz*. that "the petition shall contain a concise statement of material facts" has been satisfied. The question of dismissing the petition on that ground also therefore did not arise. The High Court in our opinion committed no wrong in coming to that conclusion.

[16] We need only emphasise that the burden which lies on an election petitioner to prove the allegations made by him in the election petition, whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a

6. (1999) 2 SCC 217
8. (1999) 3 SCC 737
9. (2001) 1 SCC 261
10. (2004) 11 SCC 196
11. (2005) 13 SCC 511
12. (2008) 11 SCC 740
13. (2007) 3 SCC 617

petition at the threshold. All that the refusal to dismiss the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so, on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a twofold objective. First, they take a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 and 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself subserves the interests of the successful candidate. Dilatory tactics including long-drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time frame.

[17] While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to the ends of justice that can be served only by an early and speedy disposal of the proceedings. The courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The courts need to be cautious in dealing with requests for dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so.

[18] Mr Rao next argued that the election petition was liable to be dismissed also on the ground that the same was not accompanied by an affidavit which the election petitioner was obliged to file in terms of the proviso to Section 83(1) of the Act. He urged that the use of the word "shall" in the proviso made it mandatory for the petitioner to support the averments in the

election petition with an affidavit in Form 25 prescribed under Rule 94-A of the Conduct of Elections Rules, 1961. Inasmuch as an affidavit had not been filed in the prescribed format, the election petition, argued Mr Rao, was no election petition in the eye of the law and was, therefore, liable to be dismissed in limine. Reliance in support of his submissions was placed by Mr Rao upon the decisions of this Court in *M. Kamalam v. V.A. Syed Mohammed*[14], *R.P. Moidutty v. P.T. Kunju Mohammad*[15], *V. Narayanaswamy v. C.P. Thirunavukkarasu*[16], *Kamalnath v. Sudesh Verma*[17], *Mithilesh Kumar Pandey v. Baidyanath Yadav*[18], *Ravinder Singh v. Janmeja Singh*[19] and *Ram Sukh v. Dinesh Aggarwal*[20].

[19] On behalf of the respondent, it was argued by Mr Ranjit Kumar that the non-filing of an affidavit in terms of the proviso to Section 83(1) of the Act was never taken as a ground before the High Court in the application which the High Court has decided[1] in terms of the impugned order nor was the point ever argued at the Bar. The appellant cannot, therefore, urge that point before this Court for the first time. Relying upon the decision of this Court in *Balwan Singh v. Prakash Chand*[21], Mr Kumar argued that a plea relating to defective verification of the petition was not allowed to be taken by this Court for the first time in appeal.

[20] It was further submitted by Mr Kumar that an affidavit in support of the election petition had indeed been filed by the respondent-petitioner in which the averments and the grounds alleged by the respondent were set out and reiterated on oath. An affidavit filed under Order 6 Rule 15(4) CPC supporting the averments made in the election petition has also been filed including the averments made in paras 12 to 15 of the election petition. It was urged that the two affidavits mentioned above sufficiently complied with the requirements of Section 83 of the Act and Rule 94-A of the Conduct of Elections Rules, 1961. He submitted that even assuming that there was any deficiency in the affidavit sworn by the respondent, not being in the format in

14. (1978) 2 SCC 659
15. (2000) 1 SCC 481
16. (2000) 2 SCC 294
17. (2002) 2 SCC 410
18. (1984) 2 SCC 1
19. (2000) 8 SCC 191
20. (2009) 10 SCC 541
1. *Kommuri Pratap Reddy v. Ponnala Lakshmaiah*, EP No. 13 of 2009, order dated 22 4 2010 (AP)
21. (1976) 2 SCC 440

which the same was required to be filed, yet the same was not fatal to the election petition inasmuch as the court trying the petition can at any stage of the proceedings direct the election petitioner to file a proper affidavit if it finds that the one already filed is deficient in any way.

[21] There is considerable merit in the submission made by Mr Kumar. The ground urged by Mr Rao was not admittedly raised in the application filed by the appellant before the High Court nor was it argued at the Bar. The High Court had in that view no occasion to deal with the contention that is sought to be advanced before us for the first time. There is no reason why the appellant should not have urged the point before the High Court, if he was serious about its implications.

[22] Even otherwise the question whether non-compliance with the proviso to Section 83(1) of the Act is fatal to the election petition is no longer res integra in the light of a three-Judge Bench decision of this Court in *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*[10]. In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance with Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.

[23] This Court observed: (*Sukh Darshan* case[10], SCC pp. 202-03, para 14)

> 14. So is the case with the defect pointed out by the High Court in the affidavit filed in support of the election petition alleging corrupt practice by the winning candidate. The proviso enacted to sub-section (1) of Section 83 of the Act is couched in a mandatory form inasmuch as it provides that a petition alleging corrupt practice shall be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and the particulars thereof. The form is prescribed by

10. (2004) 11 SCC 196

> Rule 94-A. But at the same time, it cannot be lost sight of that failure to comply with the requirement as to filing of an affidavit cannot be a ground for dismissal of an election petition in limine under sub-section (1) of Section 86 of the Act. The point is no more res integra and is covered by several decisions of this Court. Suffice it to refer to two recent decisions, namely, *G. Mallikarjunappa v. Shamanur Shivashankarappa*[22] and *Vijay Laxmi Sadho v. Jagdish*[23], both three Judge Bench decisions, wherein the learned Chief Justice has spoken for the Benches. It has been held that an election petition is liable to be dismissed in limine under Section 86(1) of the Act if the election petition does not comply with either the provisions of 'Section 81 or Section 82 or Section 117 of the RP Act'. The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of the allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with the provisions of Section 83(1) or 83(2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly 'defective' affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

[24] More importantly the Court held that if the High Court had found the affidavit to be defective for any reason, it should have allowed an opportunity to the election petitioner to remove the same by filing a proper affidavit. This Court observed: (*Sukh Darshan* case[10], SCC p. 203, para 15)

> 15. Having formed an opinion that there was any defect in the affidavit, the election petitioner should have been allowed an opportunity of removing the defect by filing a proper affidavit. Else the effect of such failure should have been left to be determined and adjudicated upon at the trial, as held in *G. Mallikarjunappa* case[22].

[25] To the same effect is the decision of a three-Judge Bench of this Court in *G. Mallikarjunappa v. Shamanur Shivashankarappa*[22]. The High Court had in that case also dismissed the election petitions taking the view that there had been non-compliance with

22. (2001) 4 SCC 428
23. (2001) 2 SCC 247
10. *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*, (2004) 11 SCC 196

Rule 94-A of the Conduct of Elections Rules, 1961 inasmuch as the affidavit filed in support of the allegations of corrupt practices with the election petitions did not comply with the requirements of the format as prescribed in Form 25. Allowing the appeal this Court observed: (SCC p. 431, para 7)

> 7. An election petition is liable to be dismissed in limine under Section 86(1) of the Act if the election petition does not comply with either the provisions of 'Section 81 or Section 82 or Section 117 of the RP Act'. The requirement of filing an affidavit along with an election petition, in the prescribed form, in support of the allegations of corrupt practice is contained in Section 83(1) of the Act. Non-compliance with the provisions of Section 83 of the Act, however, does not attract the consequences envisaged by Section 86(1) of the Act. Therefore, an election petition is not liable to be dismissed in limine under Section 86 of the Act, for alleged non-compliance with the provisions of Section 83(1) or 83(2) of the Act or of its proviso. The defect in the verification and the affidavit is a curable defect. What other consequences, if any, may follow from an allegedly 'defective' affidavit, is required to be judged at the trial of an election petition but Section 86(1) of the Act in terms cannot be attracted to such a case.

A similar view was taken by a three-Judge Bench of this Court in *F.A. Sapa v. Singora*[24] and in *Vijay Laxmi Sadho v. Jagdish*[23].

[26] We may also refer to a Constitution Bench decision of this Court in *Murarka Radhey Shyam Ram Kumar v. Roop Singh Rathore*[25] where this Court held that a defective affidavit is not a sufficient ground for summary dismissal of an election petition as the provisions of Section 83 of the Act are not mandatorily to be complied with nor did the same make a petition invalid as an affidavit can be allowed to be filed at a later stage or so. Relying upon the decision of a three-Judge Bench of this Court, in *T. Phungzathang v. Hangkhanlian*[26] this Court held that non-compliance with Section 83 is not a ground for dismissal of an election petition under Section 86 and the defect, if any, is curable as has been held by a three-Judge Bench of this Court in *Manohar Joshi v. Nitin Bhaurao Patil*[27] and *H.D. Revanna v. G. Puttaswamy Gowda*[6].

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24. (1991) 3 SCC 375
23. (2001) 2 SCC 247
25. AIR 1964 SC 1545
26. (2001) 8 SCC 358
27. (1996) 1 SCC 169
6. (1999) 2 SCC 217

[27] This Court observed: (*Hangkhanlian* case[26], SCC p. 374, para 27)

> 27. ... If the view of the High Court in the order impugned before us is to be upheld, an election petitioner having filed an affidavit fully satisfying the requirement of Section 83(1) proviso and Rule 94-A in all respects but having made an omission in the copy of the affidavit delivered to the respondent would be placed in a position worse than an election petitioner whose original affidavit filed with the election petition itself did not satisfy the requirement of Section 83(1) proviso read with Rule 94-A. This could not have been the intendment of law. Such an interpretation would, to say the least, make a mockery of justice. That non-compliance with Section 83 cannot be a ground for dismissal of the election petition under Section 86 and the defect, if any, is curable, has been the view taken by a three-Judge Bench in *Manohar Joshi v. Nitin Bhaurao Patil*[27] and also in *H.D. Revanna v. G. Puttaswamy Gowda*[6] wherein all the decisions available till then have been considered. In *Kamal Narain Sarma v. Dwarka Prasad Mishra*[28] affidavit was sworn in before the Clerk of Court attached with the Office of the District Judge empowered by the District Judge under Section 139(c) of the Code of Civil Procedure for the purpose of administration of oaths on affidavits made under the Code of Civil Procedure. The Election Tribunal allowed a fresh affidavit to be filed in place of such affidavit, treating it to be defective. On the matter reaching this Court, a Constitution Bench held that an extreme and technical view was not justified. The affidavit was held to be proper and the second affidavit was held to be not necessary.

[28] The decisions relied upon by Mr Rao do not in terms deal with a comparable situation to the one this Court was dealing with in *Sardar Harcharan Singh Brar* case[10]. The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form

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26. (2001) 8 SCC 358
27. (1996) 1 SCC 169
6. (1999) 2 SCC 217
28. AIR 1966 SC 436
10. *Sardar Harcharan Singh Brar v. Sukh Darshan Singh*, (2004) 11 SCC 196

other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so.

[29] There is no denying the fact that the election of a successful candidate is not lightly interfered with by the courts. The courts generally lean in favour of the returned candidates and place the onus of proof on the person challenging the end result of an electoral contest. That approach is more in the nature of a rule of practice than a rule of law and should not be unduly stretched beyond a limit. We say so because while it is important to respect a popular verdict and the courts ought to be slow in upsetting the same, it is equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the Act cannot obviously be recognised and respected as the decision of the majority of the electorate. The courts are, therefore, duty-bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hypertechnical in their approach and without being oblivious of the ground realities.

[30] Experience has shown that the electoral process is, despite several safeguards taken by the statutory authorities concerned, often vitiated by use of means, factors and considerations that are specifically forbidden by the statute. The electoral process is vulnerable to misuse, in several ways, in the process distorting the picture in which the obvious may be completely different from the real. Electoral reforms are, therefore, a crying need of our times but have remained a far cry. If the courts also adopt a technical approach towards the resolution of electoral disputes, the confidence of the people not only in the democratic process but in the efficacy of the judicial determination of electoral disputes will be seriously undermined. This Court has in several pronouncements while emphasising the need to leave the elections untouched, reiterated the need to maintain the purity of elections and thereby strengthening democratic values in this country. The decisions of this Court in *T.A. Ahammed Kabeer v. A.A. Azeez*[29] and *P. Malaichami v. M. Andi Ambalam*[30] express a similar sentiment.

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29. (2003) 5 SCC 650
30. (1973) 2 SCC 170

[31] Suffice it to say, that in the absence of any provision making breach of the proviso to Section 83(1) a valid ground of dismissal of an election petition at the threshold, we see no reason why the requirement of filing an affidavit in a given format should be exalted by a judicial interpretation to the status of a statutory mandate. A petition that raises triable issues need not, therefore, be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful candidate and can be cured by the election petitioner by filing a proper affidavit.

[32] In the result, this appeal fails and is dismissed with costs assessed at Rs 25,000.